

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 69

April 17, 1996, 5:50 p.m.  
Page S-3475 Temp. Record

## TERRORISM PREVENTION CONFERENCE/Terrorism and Emergency Wiretaps

**SUBJECT:** Conference report to accompany the Antiterrorism and Effective Death Penalty Act of 1996 . . . S. 735.  
Hatch/Dole motion to table the Biden motion to recommit with instructions.

### ACTION: MOTION TO TABLE MOTION TO RECOMMIT AGREED TO, 56-43

**SYNOPSIS:** The conference report to accompany S. 735, the Terrorism Prevention Act, will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

**The Biden motion to recommit with instructions** would direct Senate conferees to insist on the adoption of a provision that would let the Attorney General, the Deputy Attorney General, or the Associate Attorney General order a wiretap for 48 hours without court approval in cases of conspiratorial activity characteristic of domestic or international terrorism. The provision would define "domestic terrorism" as meaning "any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and which appear to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping." The wiretap authority provided by this amendment would last for no more than 48 hours, during which time a court order could be sought. If a court order were not obtained, none of the evidence gained from the surveillance would be admissible in court. This authority would add to similar existing authority for these officials unilaterally to order wiretaps: if there is immediate danger of death or serious physical injury to any person; conspiratorial activities threatening the national security; or conspiratorial activities characteristic of organized crime. The provision is identical to the text of a Lieberman amendment that was rejected by the Senate when it considered S. 735 (see 104th Congress, first session, vote No. 233).

Debate was limited by unanimous consent. Following debate, Senator Hatch, for himself and Senator Dole, moved to table the Biden motion. Generally, those favoring the motion to table opposed the motion to recommit; those opposing the motion to table favored the motion to recommit.

(See other side)

YEAS (56)			NAYS (43)		NOT VOTING (1)	
Republicans (52 or 100%)	Democrats (4 or 9%)		Republicans (0 or 0%)	Democrats (43 or 91%)	Republicans (1)	Democrats (0)
Abraham	Helms	Baucus		Akaka	Inouye	
Ashcroft	Hutchison	Feingold		Biden	Johnston	
Bennett	Inhofe	Moseley-Braun		Bingaman	Kennedy	
Bond	Jeffords	Reid		Boxer	Kerrey	
Brown	Kassebaum			Bradley	Kerry	
Burns	Kempthorne			Breaux	Kohl	
Campbell	Kyl			Bryan	Lautenberg	
Chafee	Lott			Bumpers	Leahy	
Coats	Lugar			Byrd	Levin	
Cochran	McCain			Conrad	Lieberman	
Cohen	McConnell			Daschle	Mikulski	
Coverdell	Murkowski			Dodd	Moynihan	
Craig	Nickles			Dorgan	Murray	
D'Amato	Pressler			Exon	Nunn	
DeWine	Roth			Feinstein	Pell	
Dole	Santorum			Ford	Pryor	
Domenici	Shelby			Glenn	Robb	
Faircloth	Simpson			Graham	Rockefeller	
Frist	Smith			Harkin	Sarbanes	
Gorton	Snowe			Heflin	Simon	
Gramm	Specter			Hollings	Wellstone	
Grams	Stevens				Wyden	
Grassley	Thomas					
Gregg	Thompson					
Hatch	Thurmond					
Hatfield	Warner					

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

**Those favoring** the motion to table the motion to recommit contended:

The Biden motion would add very little, if anything, in substance to the ability to track terrorists, but it could lead to very troubling infringements upon the civil liberties of ordinary Americans. Virtually every act of terrorism one can imagine which would require an emergency wiretap--that is, the threat is so immediate that the Government does not have time to obtain a court order--will certainly either involve "an immediate danger of death or serious physical injury" or "a conspiratorial activity threatening the national interest." Emergency wiretap authority already exists for those circumstances. Therefore, the Lieberman amendment is not needed.

In return for not accomplishing anything of substantive value, the Biden motion could be used to trammel Americans' civil liberties because of its expansive and vague definition of domestic terrorism. The motion would define such terrorism as any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and which appear to be intended to intimidate or coerce a civilian population or to influence a government policy by intimidation or coercion. Some Senators have made the dismissive statement that this amendment would not broaden the laws for which wiretaps may be granted; however, saying it is so does not make it so. The motion would clearly give the Attorney General, on her own judgment, to determine if a group or individual was involved in conspiratorial activities that threatened human life, that violated the law, and that were intended to intimidate or coerce, and to impose a wiretap on that determination. Under this expansive definition, who and which groups might be found to be terrorists would not be clear, and the answer would likely depend on the particular political views of the Attorney General. For example, if the homosexual group ACT-UP or some of the more extreme environmental groups decided to block traffic on a street or to block an entrance to a hospital, the Attorney General may note that a State felony law on trespassing has been violated, and then decide that human life was threatened from unsafe traffic conditions or an inability to enter the hospital. On this basis, without any opportunity for anyone to review her authority, she could order secret wiretaps of these groups. She would not even have to wait until they engaged in such activities; if she thought it likely that they would, she could order a wiretap. We are deeply troubled by this proposal to give such expansive authority to the Attorney General. The potential for political abuse is extreme. The Federal Government, particularly in the 1960's, has been guilty of some unfortunate surveillance activities. We cherish our individual freedoms, and are distrustful of any proposal that allows secret police surveillance.

None of these arguments should be unfamiliar to Senators, because they are the same arguments we made in the Senate last year when we defeated this proposal when it was offered as an amendment to S. 735. This measure was not in the Senate-passed bill, nor was it in the House-passed bill. Our colleagues are well aware of how concerned a number of House Members are with protecting Americans' civil liberties. On this particular issue, we know there are probably even more House Democrats who oppose expanding emergency wiretap authority than there are House Republicans. As with all the previous motions to recommit, this motion would demand that the House accept a provision which it could not accept without losing so many votes on passage of the conference report that the report would be rejected. As with all the other previous motions that have been made, this motion would undo the carefully balanced compromise and would kill this bill. We are determined to prevent that end, and thus support the motion to table.

**Those opposing** the motion to table the motion to recommit contended:

Under current law, three officials--the Attorney General, the Deputy Attorney General, and the Assistant Attorney General--have the authority to order emergency wiretaps without a court order if life is in danger, if national security is threatened, or if an organized crime conspiracy is involved. After ordering such an emergency wiretap, a court order authorizing it must still be obtained within 48 hours or else any information gained will be inadmissible in court. Court orders for wiretaps are only available for surveillance on certain types of criminal activity; those crimes are carefully delineated by law. The Biden amendment would add to this existing wiretap authority that these officials could also have emergency wiretap authority for surveillance involving domestic terrorism or international terrorism. After ordering such a wiretap, a court order to continue it and to use any information gained would still be required, and to get that order evidence would have to be presented that surveillance was being conducted of a criminal activity that is covered by wiretap authority under current law. Thus, our colleagues' fear that this amendment would make a wholesale expansion in emergency wiretap authority is unwarranted. Some Senators have also argued that this amendment would go too far because it would allow emergency surveillance of terrorists even when there was no reason to believe that they were about to commit a terrorist attack. These Senators note that existing emergency wiretap authority already allows emergency wiretaps of terrorists when the Justice Department believes they pose an imminent threat of causing death or injuries. They are correct, but they are then being inconsistent if they are going to set the standard in this case that emergency wiretaps can only be given when there is imminent danger of death or injury. To our knowledge, we have never heard our colleagues complain about emergency surveillance of organized crime figures. Such figures are indeed despicable people, but they do not have a tendency to commit random acts of mass violence. Surely if we can conduct emergency surveillance of organized crime figures even when we are not certain they are about to commit violent acts we can also conduct emergency surveillance of terrorists. The Biden motion makes a very modest expansion of existing emergency wiretap authority to help law enforcement efforts against terrorism. We are pleased to give it our support.